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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the

# Federal Communications Commission

Washington, D.C. 20554

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| In the Matter of the Application of | ) | MM Docket No. 93-54 |

## I. DENIAL OF THE GUILD'S *PETITION FOR INTERVENTION*

The initial premise of the *Order*'s conclusion that the Guild is not entitled to intervene under Section 1.223 of the Commission's Rules, 47 C.F.R. § 1.223 (1992), was that the "Guild's petition to deny has been denied." *Order* at 1, par. 2. The *Hearing Designation Order*, 8 FCC Rcd 1742 (1993) ("*HDO*"), however, did not deny the Guild's petition in its entirety, but only "to the extent indicated" therein. *Compare HDO* par. 45 *with HDO* par. 44 (unqualified denial of petition to deny of Class Entertainment and Communications, L.P.). The continuing pendency of the Guild's *Petition to Deny* — and hence its continuing status as a petitioner in this renewal proceeding — were simply disregarded in the *Order*'s rejection of the Guild's *Petition for Intervention*.

By disregarding the Guild's continuing petitioner status, the *Order* improperly treated the Guild as if it were a stranger to the ongoing renewal proceedings and as if it lacked any interest that would be affected by the outcome of the hearing. Clearly, as a petitioner to deny GAF's renewal application — and one that the Commission has found to have a sufficient interest to maintain a petition seeking such relief — the Guild undeniably has a cognizable interest in the outcome of the hearing proceeding.

The *Order*'s reliance on a decision involving the same parties nearly a decade ago, *GAF Broadcasting Co., Inc.*, 55 RR2d 1639 (1984), was misplaced, since the circumstances then were quite different from those which now prevail. When the Guild had sought intervention in that earlier case, no petition to deny renewal remained pending, and the Guild had expressly

declined to state whether it would oppose or support the grant of any application then pending before the Commission. The stark contrast between that situation and the Guild's present status as a petitioner unequivocally seeking denial of GAF's renewal application renders any attempted analogy wholly inappropriate. Clearly, the Guild *now* satisfies the criteria for

the *HDO*'s listing of all pending pleadings did not include GAF's *Amendment to Consolidated Opposition*, the pleading in which GAF first disclosed its false reporting[1] of employment data, and which was filed February 22, 1993, just one week prior to the adoption of the *HDO*. The *HDO* thus cannot be regarded as having considered and acted upon that disclosure.

The *Order* stands reason on its head by treating the Guild's argument — based directly upon the express recitals of the *HDO* — as "speculation and conjecture," *Order* at 3, par. 6, when it was *GAF* that had offered speculation about what the Mass Media Bureau "likely would have" done.[2] Nor did the *Order* provide any basis or explanation for its conclusion that the referral of *pending* EEO matters to the EEO branch was somehow "intended" to include all possible *future* allegations of misrepresentation by GAF to the Commission if they concern EEO-related matters. It thus was error to conclude that the *HDO* gave a "clear and unambiguous directive" to the Presiding Judge to refuse to consider the implications of the revelations contained in GAF's *Amendment to Consolidated Opposition*.

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1. The *Order*, at 3, par. 5, unquestioningly adopted the characterization of GAF's conduct urged by GAF's counsel — "GAF acknowledged and corrected certain errors" — despite the utter absence of any sworn explanation from GAF, even in response to the Guild's allegations. It thus prejudged the very issue that requires an evidentiary hearing.

2. GAF's *Opposition to Motion to Enlarge Issues*, at 4 n.5, speculated that the Bureau was likely to have considered GAF's *Amendment to Consolidated Opposition* and then to have decided to allow the already-adopted *HDO* to be released without a mention of that pleading. GAF's hypothetical scenario did not even consider that it would have been inappropriate for the Commission to act on matters raised in, or by virtue of the filing of, the Amendment without affording all other parties an opportunity to respond. Without such responses, the Bureau, even if it had considered the GAF pleading, might not have questioned whether GAF had been guilty of misrepresentation or concealment.

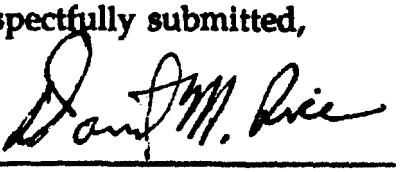
In rejecting the Guild's proposed issue relating to GAF's abuse of the Commission's processes, the Presiding Judge erroneously described the *HDO* as having provided a "reasoned analysis" of the matter, *Order* at 3, par. 7, completely disregarding the Guild's demonstration that the *HDO* had mischaracterized the issue that the Guild had sought to raise and consequently had never addressed the allegations and arguments that *actually* were set forth in the Guild's prior pleadings. Thus, the *Order*, like the *HDO*, deprived the Guild of a hearing on the abuse of process issue it has raised without providing any discussion, much less analysis, by the Commission. *Atlantic Broadcasting Co.*, 5 FCC 2d 717 (1966) does not dictate, or even support, such a result. *See* the Guild's *Consolidated Reply to Oppositions to Motion to Enlarge Issues*, at 4-6.

## CONCLUSION

In light of the foregoing, the *Order* should be reversed, the Guild permitted to intervene as a party to the hearing, and the hearing issues enlarged as requested by the Guild.

Dated: June 22, 1993

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, DAVID M. RICE, hereby certify that the foregoing "APPEAL OF LISTENERS'

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